

File No. 10-23373-0  
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Attorneys for Defendant  
LAW OFFICES OF NELSON & KENNARD

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Defendant LAW OFFICES OF NELSON & KENNARD (hereinafter "Defendant") hereby respond and answer the Verified Complaint and Demand for Jury Trial of Plaintiff DANA PASQUALE as follows:

## INTRODUCTION

1. In response to paragraph 1 of Plaintiff's Complaint, Defendant lacks information sufficient for it to either admit or deny the allegations contained therein and, based thereon, denies each and every allegation contained therein.

2. In response to paragraph 2 of Plaintiff's Complaint, Defendant lacks information sufficient for it to either admit or deny the allegations contained therein and, based thereon, denies each and every allegation contained therein.

3. In response to paragraph 3 of Plaintiff's Complaint, Defendant lacks information sufficient for it to either admit or deny the allegations contained therein and, based thereon, denies each and every allegation contained therein.

## JURISDICTION AND VENUE

4. In response to paragraph 4 of Plaintiff's Complaint, Defendant lacks information sufficient for it to either admit or deny the allegations contained therein and, based thereon, denies each and every allegation contained therein.

5. In response to paragraph 5 of Plaintiff's Complaint, Defendant admits that it conducts business and is located in the State of California. Defendant denies each and every other allegation contained therein.

6. In response to paragraph 6 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

## PARTIES

7. In response to paragraph 7 of Plaintiff's Complaint, Defendant lacks sufficient information or belief to enable it to either admit or deny the allegations contained therein, and based thereon, denies each and every allegation.

1       8. In response to paragraph 8 of Plaintiff's Complaint,  
2       Defendant lacks sufficient information or belief to enable it to  
3       either admit or deny the allegations contained therein and, based  
4       thereon, denies each and every allegation.

5       9.    In response to paragraph 9 of Plaintiff's Complaint,  
6   Defendant lacks sufficient information or belief to enable it to  
7   either admit or deny the allegations contained therein and, based  
8   thereon, denies each and every allegation.

10. In response to paragraph 10 of Plaintiff's Complaint,  
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11 Defendant admits that its business office is located in Sacramento,  
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12 California. Defendant denies each and every other allegation  
12  
13 contained therein.  
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## FACTUAL ALLEGATIONS

11. In response to paragraph 11 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

18       12. Defendant lacks sufficient information or belief to enable  
19       it to either admit or deny the allegations contained in paragraph 12  
20       of Plaintiff's Complaint, and based thereon, denies each and every  
21       allegation therein. Defendant further denies that at all times  
22       relevant, Plaintiff lacked actual knowledge that Defendant's  
23       telephone calls, if any, were from a debt collector.

24       13. Defendant lacks sufficient information or belief to enable  
25       it to either admit or deny the allegations contained in paragraph 13

1 of Plaintiff's Complaint and, based thereon, denies each and every  
2 allegation therein.

3 **COUNT I**

4 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT.**

5 14. In response to paragraph 14 of Plaintiff's Complaint,  
6 Defendant denies each and every allegation contained therein.

7 15. In response to paragraph 15 of Plaintiff's Complaint,  
8 Defendant denies each and every allegation contained therein and  
9 specifically denies that Plaintiff has been damaged in any sum or  
10 respect whatsoever.

11 16. In response to paragraph 16 of Plaintiff's Complaint,  
12 Defendant denies each and every allegation contained therein and  
13 specifically denies that Plaintiff is entitled to costs and/or  
14 attorney's fees in any sum or respect whatsoever.

15 17. In response to paragraph 17 of Plaintiff's Complaint,  
16 Defendant denies that it is entitled to any relief whatsoever.

17 **COUNT II**

18 **DEFENDANT VIOLATED THE ROSENTHA FAIR DEBT COLLECTION PRACTICES ACT**

19 18. In response to paragraph 18 of Plaintiff's Complaint,  
20 Defendant repeats its responses to each and every allegation  
21 contained in Count I of Plaintiff's Complaint.

22 19. In response to paragraph 19 of Plaintiff's Complaint,  
23 Defendant denies each and every allegation contained therein.

1           20. In response to paragraph 20 of Plaintiff's Complaint,  
2 Defendant denies each and every allegation contained therein and  
3 specifically denies that Plaintiff has been damaged in any sum or  
4 respect whatsoever.

5       21. In response to paragraph 21 of Plaintiff's Complaint,  
6 Defendant denies each and every allegation contained therein and  
7 specifically denies that Plaintiff is entitled to costs and/or  
8 attorney's fees in any sum or respect whatsoever.

10       22. In response to paragraph 22 of Plaintiff's Complaint,  
11 Defendant denies that Plaintiff is entitled to any relief  
12 whatsoever.

## AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

23. The Complaint of Plaintiff fails to state facts sufficient to constitute a claim for relief against Defendant

SECOND AFFIRMATIVE DEFENSE

19       24. Plaintiff is estopped to assert the matters complained of  
20 in her Complaint by virtue of her own unclean hands and  
21 participatory conduct in and about the matters complained of.

### THIRD AFFIRMATIVE DEFENSE

25. Plaintiff failed to mitigate her damages, if any she has, thereby absolving Defendant from any responsibility therefore.

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#### **FOURTH AFFIRMATIVE DEFENSE**

26. Plaintiff assumed the risk of loss as to each and every claim contained in her Complaint by virtue of her own conduct.

## FIFTH AFFIRMATIVE DEFENSE

27. To the extent Plaintiff establishes that a violation of the FDCPA may have occurred, Defendant submits that such error was unintentional and occurred notwithstanding procedures maintained by Defendant designed and calculated to preclude such a bona fide error.

#### SIXTH AFFIRMATIVE DEFENSE

28. To the extent Plaintiff establishes that a violation of the FDCPA may have occurred, such violation, if any, was immaterial and therefore not actionable.

## SEVENTH AFFIRMATIVE DEFENSE

29. To the extent Plaintiff establishes that a violation of the Rosenthal Act may have occurred, Defendant submits that such error was unintentional and occurred notwithstanding procedures maintained by Defendant designed and calculated to preclude such a bona fide error.

EIGHTH AFFIRMATIVE DEFENSE

30. To the extent Plaintiff establishes that a violation of the Rosenthal Act may have occurred, such violation, if any, was immaterial and therefore not actionable.

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**NINTH AFFIRMATIVE DEFENSE**

1           31. As a separate and affirmative defense to the Complaint on  
2 file herein, and to each purported cause of action thereof, this  
3 answering Defendant alleges that if the facts alleged in the  
4 Complaint are true, which facts this answering Defendant  
5 specifically denies, then Plaintiff by her words and deeds has  
6 consented to the alleged conduct of this answering Defendant, and by  
7 reason of consent, is barred from seeking or securing the relief  
8 prayed for in her Complaint and each of purported cause of action  
9 therein.

**TENTH AFFIRMATIVE DEFENSE**

13           32. As a separate and affirmative defense to the Complaint on  
14 file herein, and to each purported cause of action thereof, this  
15 answering Defendant alleges that any recovery on Plaintiff's  
16 Complaint or claim for relief alleged therein is barred because this  
17 answering Defendant's conduct was privileged and justified.

**ELEVENTH AFFIRMATIVE DEFENSE**

20           33. As a separate and affirmative defense to the Complaint on  
21 file herein, and to each purported claim for relief alleged therein,  
22 this answering Defendant alleges that Plaintiff has failed to name  
23 the real party in interest and therefore, Plaintiff's claim should  
24 be dismissed.

**TWELFTH AFFIRMATIVE DEFENSE**

26           34. As a separate and affirmative defense to the Complaint on  
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1 file herein, and to each purported claim for relief alleged therein,  
2 this answering Defendant alleges that Defendant, at all relevant  
3 times complied with the Fair Debt Collection Practices Act.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 35. As a separate and affirmative defense to the Complaint on  
6 file herein, and to each purported claim for relief alleged therein,  
7 this answering Defendant alleges that Defendant, at all relevant  
8 times complied with the Rosenthal Fair Debt Collection Act.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 36. This answering Defendant presently has insufficient  
11 knowledge or information on which to form a belief as to whether it  
12 may have additional, and not yet alleged, affirmative defenses.  
13 Defendant reserves the right to assert additional defenses that are  
14 revealed by further investigation or by discovery.

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## PRAYER

2 WHEREFORE, Defendant LAW OFFICES OF NELSON & KENNARD  
3 respectfully prays as follows:

4 (1) That the Complaint against Defendant is dismissed with  
5 prejudice and that Plaintiff take nothing by way of his Complaint;

6 (2) That Defendant be awarded its attorneys fees, costs, and  
7 disbursements incurred in the defense of this action; and

8 (3) That the Court award Defendant such other and further  
9 relief as the Court deems just and proper.

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Dated: 31/1/12

By:

ROBERT SCOTT KENNARD  
Attorney for Defendant  
Law Offices of Nelson & Kennard